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The World Bank's Lending Policy and Environmental Standards

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The World Bank's Lending Policy and Environmental Standards

Cover Page Footnote

International Law; Commercial Law; Law

The World Bank's Lending Policy and Environmental Standards

I. Introduction

Following the Bretton Woods Conference in 1945, the world's major economic powers established the World Bank¹ as "the first and largest multilateral financial institution."² Under its Charter, or Articles of Agreement, the World Bank was established in part "to assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes . . . and the encouragement of the development of productive facilities and resources in less developed countries."³

Although the word *environment* does not appear in the World Bank's charter, the World Bank devotes more resources directly to environmental objectives than any international organization.⁴ The World Bank employs over 300 environmental specialists and has committed close to \$12 billion in recent years for 166 primarily environmental projects.⁵ The World Bank's environmental agenda has four objectives which include: (1) ensuring that potential adverse environmental impacts from World Bank-financed activities are addressed; (2) assisting member countries further poverty reduction, economic efficiency, and environmental protection; (3) helping member countries set priorities, build institutions, and implement programs for sound environment

¹ John W. Head, *Evolution of the Governing Law for Loan Agreements of the World Bank and Other Multilateral Development Banks*, 90 AM. J. INT'L L. 214, 214 n.1 (1996).

² Charles E. Di Leva, *International Law and Development*, 10 GEO. INT'L ENVTL. L. REV. 501, 504 (1998).

³ *Id.* at 504-05 (quoting International Bank for Reconstruction and Development (IBRD), Articles of Agreement, Dec. 27, 1949, 2 U.N.T.S. 134, *amended by* T.I.A.S. No. 5929 (Dec. 16, 1965) [hereinafter World Bank Articles of Agreement]); *see also* International Development Association (IDA), Articles of Agreement, Jan. 26, 1960, 439 U.N.T.S. 249.

⁴ *Id.* at 505.

⁵ *Id.*

stewardship; and (4) addressing global environmental challenges through participation in the Global Environment Facility (GEF).⁶

The World Bank has established certain policies and utilized different mechanisms to carry out its environmental agenda. These policies include Operational Policies, Bank Procedures, and Good Practices, which require an environmental assessment (EA) or analysis for any World Bank-financed project that may result in adverse environmental impact. The policies also ensure that the World Bank consults with affected groups and local non-governmental organizations (NGOs) and require resettlement plans and measures to avoid or minimize involuntary displacement. Finally, the policies also ensure that the World Bank does not finance any project that contravenes international conventions or national conservation laws.⁷ In addition, the World Bank uses several mechanisms to implement its environmental policy, which include review by an independent Inspection Panel for alleged failures of the World Bank to carry out its policies, and special trust funds (i.e., providing grants and funding to solve environmental problems), including the Global Environmental Facility.⁸

Although the World Bank has begun to recognize the importance of accounting for the environment in its lending policy, the World Bank itself has acknowledged past problems with execution of its own environmental policy.⁹ Furthermore, environmental groups and member countries have criticized the World Bank, alleging that Bank policies promote the unsustainable use of natural resources, fail to provide sufficient

⁶ IBRAHIM F.I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD II* 541-42 (1995).

⁷ *Id.* at 542-46; see also Melenna Andromecca Civic, *Prospects for the Respect and Promotion of Internationally Recognized Development Practices: A Case Study of the World Bank Environmental Guidelines and Procedures*, 9 FORDHAM ENVTL. L.J. 231, 246-60 (1998); Di Leva, *supra* note 2, at 518-29.

⁸ SHIHATA, *supra* note 6, at 548-49; see also Civic, *supra* note 7, at 243-46; Ian A. Bowles & Cyril F. Kormos, *Environmental Reform at the World Bank: The Role of the U.S. Congress*, 35 VA. J. INT'L L. 777, 798 (1995); Di Leva, *supra* note 2, at 513-18.

⁹ Laurent R. Hourcle, *Book Review: Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development*, Bruce Rich, 28 GEO. WASH. J. INT'L L. & ECON. 721, 722 (1995); WORLD DEVELOPMENT REPORT 1992—DEVELOPMENT AND THE ENVIRONMENT, at iii (stating that “the value of the environment has been underestimated for too long”).

public access to information, and stifle local community participation in project development.¹⁰

This Comment contends that while the World Bank has taken significant steps to reform its lending policy related to environmental standards, the Bank has not consistently implemented these policies and instruments. Part II of this Comment reviews the history and structure of the World Bank, which are important to understand before discussing the Bank's environmental policy.¹¹ Part III discusses the Bank's operational policies and procedures as well as its mechanisms concerning the environment.¹² Part IV analyzes the strengths and weaknesses of the Bank's lending policy as related to environmental standards.¹³ Finally, this Comment closes with conclusions and recommendations for reform of the Bank's environmental policy.¹⁴

II. Background

The World Bank encompasses two distinct, but closely associated, institutions: the International Bank for Reconstruction & Development (IBRD) and the International Development Association (IDA).¹⁵ The IBRD was established in 1945 following the Bretton Woods Conference to provide loans and development assistance to middle-income countries and creditworthy poorer countries.¹⁶ The IBRD obtains most of its funds through the sale of bonds in international capital markets.¹⁷ The IDA was established in 1960 and plays a key role in supporting the World Bank's poverty reduction mission through contributions from wealthier member countries.¹⁸

¹⁰ BRUCE RICH, *MORTGAGING THE EARTH: THE WORLD BANK, ENVIRONMENTAL IMPOVERISHMENT, AND THE CRISIS OF DEVELOPMENT* 10-15 (1994); Civic, *supra* note 7, at 241-59; Bowles & Kormos, *supra* note 8, at 782-808.

¹¹ See *infra* notes 15-32 and accompanying text.

¹² See *infra* notes 33-135 and accompanying text.

¹³ See *infra* notes 136-261 and accompanying text.

¹⁴ See *infra* notes 262-69 and accompanying text.

¹⁵ IBRAHIM F.I. SHIHATA, *THE WORLD BANK IN A CHANGING WORLD* 17-13 (1991); Head, *supra* note 1, at 214 n.1.

¹⁶ SHIHATA, *supra* note 15, at 8-9; Head, *supra* note 1, at 214 n.1.

¹⁷ SHIHATA, *supra* note 15, at 9.

¹⁸ *Id.* at 11; Head, *supra* note 1, at 214 n.1.

The IBRD and the IDA, as well as the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID) are collectively referred to as the World Bank Group.¹⁹ The IFC was established in 1956 to promote growth in the developing world by financing private sector investments and providing technical assistance and advice to governments and businesses.²⁰ The MIGA was formed in 1988 to encourage foreign investment in developing countries by furnishing guarantees to foreign investors against loss caused by non-commercial risks.²¹ The ICSID was established in 1966 to provide facilities for the settlement, by conciliation or arbitration, of investment disputes between foreign investors and their host countries.²² The IFC has established its own environmental policies and procedures, and this Comment focuses exclusively on the World Bank's policies and procedures.²³

The World Bank is the world's greatest source of development assistance, providing nearly \$30 billion in loans annually to client countries.²⁴ The World Bank seeks to help developing countries attain stable, sustainable, and equitable growth by providing financial resources and advice.²⁵ The World Bank is involved in a wide variety of projects aimed at attaining sustainable growth in developing countries, including projects that address agriculture, education, power and other energy sources (i.e., hydroelectric dams), environmental protection, health and nutrition, industry,

¹⁹ Head, *supra* note 1, at 214 n.1.

²⁰ SHIHATA, *supra* note 15, at 10; Head, *supra* note 1, at 214 n.1.

²¹ SHIHATA, *supra* note 15, at 12; Head, *supra* note 1, at 214 n.1.

²² SHIHATA, *supra* note 15, at 11-12; Head, *supra* note 1, at 214 n.1.

²³ On July 2, 1998, the IFC adopted its own environmental policies and procedures, which are very similar to the World Bank's policies. See *IFC—Environment Division: Promoting Environmentally and Socially Responsible Private Sector Investment*, available at <http://www.ifc.org/enviro/index.html> (2000).

²⁴ RICH, *supra* note 10, at 7-8 (stating that the World Bank loaned approximately \$24 billion in 1992); THE WORLD BANK ANNUAL REPORT—1999: OVERVIEW, available at <http://www.worldbank.org/html/extpb/annrep/over.htm> (2000) [hereinafter WORLD BANK ANNUAL REPORT—1999] (updating the figure to about \$29 billion (in the fiscal year) of 1999).

²⁵ MICHELLE MILLER-ADAMS, *THE WORLD BANK—NEW AGENDAS IN A CHANGING WORLD* 1-8 (1999).

mining, oil and gas, social protection, telecommunications and technology, transportation, urban development, and water supply and sanitation.²⁶

The World Bank raises money for its development programs through the world's capital markets and through contributions from wealthier member countries that fund IDA projects.²⁷ The IBRD accounts for three-fourths of the World Bank's annual lending and raises almost all of its money through investments in financial markets.²⁸ The IBRD sells bonds and other securities to pension funds, insurance companies, corporations, other banks, and individuals to raise capital, while contributions from member countries account for only five percent of the IBRD's funds.²⁹ IBRD charges interest rates to its borrowers equivalent to the cost of borrowing, and requires loans to be repaid in fifteen to twenty years with a three to five-year grace period before repayment of principal begins.³⁰ Like the IBRD, the IDA promotes growth in developing countries, but unlike the IBRD, the IDA provides interest-free loans to countries that cannot afford commercial rates.³¹ Borrowers pay a fee of less than one percent of the loan to cover administrative costs, and loans must be repaid in thirty-five to forty years with a ten-year grace period.³²

III. The World Bank's Environmental Policies and Practices

The World Bank was created following World War II, the most catastrophic war in history, in an effort to generate capital for postwar reconstruction and development.³³ Created during a world recession, one purpose of the World Bank was to achieve global

²⁶ WORLD BANK ANNUAL REPORT—1999, *supra* note 24.

²⁷ MILLER-ADAMS, *supra* note 25, at 14-15; SHIHATA, *supra* note 15, at 7-13.

²⁸ *The World Bank Group Overview: Where Does the World Bank Get Its Money?*, available at <http://www.worldbank.org/html/extdr/about/wheremoney.htm> (2000) [hereinafter *Where Does the World Bank Get Its Money?*].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ CATHERINE GWIN, U.S. RELATIONS WITH THE WORLD BANK 1945-1992 3 (1994). The United States had the greatest impact on the creation of the World Bank and provided much of the Bank's top management and staff from 1945 to 1960. *Id.* at 2.

economic growth based on the belief that natural resources were infinite.³⁴ This historical perspective in part accounts for the Bank's founding Articles of Agreement that establish its guiding principle: normally loans will only be made for specific development projects (i.e., dams, highways, power plants, etc.), and lending decisions are to be made free of political considerations, based only on economic factors.³⁵

Although the World Bank's Articles of Agreement explicitly require that only economic considerations be evaluated in loan-making decisions, the World Bank has recently acknowledged the negative environmental consequences resulting from past Bank projects.³⁶ As a result, a new environmental agenda has emerged in the World Bank over the past ten to fifteen years, which has included the adoption of an environmental operation directive in 1984, a restructured World Bank with a new Environment Department in 1987, the Global Environment Facility (GEF) in 1991, and the World Bank Inspection Panel in 1993.³⁷

A. Environmental Policies and Procedures

In 1984, the World Bank consolidated its environmental guidelines and policies into an Operational Manual Statement, or OMS 2.36.³⁸ In 1989, the World Bank adopted an Operational Directive on Environmental Assessment, called OD 4.00, Annex A, to instruct staff and borrowers on the lending policy of the World Bank and the steps that must be taken to protect

³⁴ RICH, *supra* note 10, at 55.

³⁵ *Id.* at 57-58. However, while the Bank's Articles of Agreement may prohibit attaching environmental conditions to bank loans, they are silent on the use of non-economic factors, including environmental standards, in the structuring of loan projects. Civic, *supra* note 7, at 240.

³⁶ MILLER-ADAMS, *supra* note 25, at 2; *Environmental Assessment Sourcebook Update—The World Bank and Environmental Assessment: An Overview 1*, available at <http://www.worldbank.org> (April 1993) [hereinafter *Environmental Assessment Sourcebook Update*] (stating that beginning in the 1980s the Bank began to finance projects with specific environmental objectives that led to unanticipated environmental degradation and economic decline).

³⁷ *Environmental Assessment Sourcebook Update*, *supra* note 36, at 2; Hourcle, *supra* note 9, at 723-24; Civic, *supra* note 7, at 240; SHIHATA, *supra* note 6, at 184-85; Bowles & Kormos, *supra* note 8, at 823.

³⁸ SHIHATA, *supra* note 15, at 139. Later, the Bank broadened and revised OMS 2.36, which subsequently became Operational Directive (OD) 4.00. *Id.* at 143.

environmental and social interests.³⁹ OD 4.00, Annex A required the borrower to perform an environmental assessment (EA) for all projects that might have significant impacts on the environment.⁴⁰ Two years later the operational directive was revised to broaden its scope and applicability, and OD 4.01 replaced OD 4.00, Annex A.⁴¹ OD 4.01 incorporated the guidelines contained in the previous operational directive and introduced a new system of classification.⁴² Furthermore, OD 4.01 “provided more specific instructions to staff regarding public consultation and disclosure of information.”⁴³

In January 1999, the World Bank revised its environmental procedures again, creating three separate categories⁴⁴ to provide “clearer guidance on the Bank’s policy to its staff.”⁴⁵ The Operational Policies (OP) and Bank Procedures (BP) are mandatory procedures, while the Good Practices (GP) are only advisory.⁴⁶ Similar to the former environmental procedures,

³⁹ *Environmental Assessment Sourcebook Update*, *supra* note 36, at 2.

⁴⁰ *Id.* Bank staff had to screen and categorize all prospective loans [Category A (most significant adverse effect) through D (least adverse effect)] for potential environmental problems at the time of project identification. *Id.* The World Bank became the first multilateral bank to require a formal environmental assessment (EA) for every proposed project. Di Leva, *supra* note 2, at 522.

⁴¹ *Environmental Assessment Sourcebook Update*, *supra* note 36, at 2.

⁴² *Id.* The new classification system eliminated Category D and combined categories (e.g., A/D or B/D). *Id.* at 3. Thus, projects with multiple components should be classified according to the component with the most significant impact. *Id.*

⁴³ *Id.* at 2. OD 4.01 also mandated that the World Bank consult with affected groups and NGOs to disclose a brief description of the project, its objectives and potential adverse impacts, and a summary of the conclusions of the draft EA. *Id.* at 3. Moreover, the World Bank must consider the consulted groups’ views when drafting the EA. *Id.*

⁴⁴ WORLD BANK OPERATIONAL POLICIES, BANK PROCEDURES, AND GOOD PRACTICES 4.01, available at <http://www.worldbank.org> (Jan. 1999) [hereinafter WORLD BANK OP/BP/GP 4.01].

⁴⁵ Civic, *supra* note 7, at 246.

⁴⁶ *Id.* Operational Policies are short, focused statements that establish conditions bank staff must follow and also set forth circumstances under which exceptions to policy are admissible. WORLD BANK DRAFT OP/BP/GP 4.12, *Explanation of the World Bank’s New Policy Format*, available at <http://www.worldbank.org/html/extdr/projects.htm> (July 1999). Bank Procedures explain how the bank staff will carry out the Operational Policies. *Id.* Good Practices issue advice and guidance on policy implementation, but are not binding. *Id.*

OP/BP/GP 4.01 governs the applicability of environmental assessments and analyses by establishing the framework for the Bank's environmental policy.⁴⁷

B. Environmental Assessment

The World Bank requires borrowers to perform EAs for proposed Bank projects that could result in adverse environmental impacts in order to ensure that the proposed projects are environmentally sound and sustainable.⁴⁸ An EA is:

a process whose breadth, depth, and type of analysis depend on the nature, scale, potential environmental impact of the proposed project. EA evaluates a project's potential environmental risks and impacts in its area of influence; examines project alternatives; identifies ways of improving project selection, siting, planning design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts throughout project implementation.⁴⁹

Thus, the EA policy facilitates a coordinated effort by the World Bank and the borrower to ensure that economic, social, and environmental considerations are addressed.

The World Bank defines "environmentally sound and sustainable" broadly in OP 4.01, paragraph 3, by including "the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and cultural property); and transboundary and global environmental aspects."⁵⁰ As in OD 4.01, the borrower assumes responsibility for implementing the EA.⁵¹

The World Bank also screens each individual project to determine the appropriate scope and type of EA.⁵² When the

⁴⁷ Civic, *supra* note 7, at 248.

⁴⁸ WORLD BANK, WORLD BANK OPERATIONAL MANUAL, OPERATIONAL POLICIES, OP 4.01, ¶¶ 1, 4, 8, available at <http://www.wbln0018.worldbank.org/institutional/manuals/opmanual.nsf/> (1999) [hereinafter WORLD BANK OP 4.01].

⁴⁹ *Id.* ¶ 2.

⁵⁰ *Id.* ¶ 3.

⁵¹ *See id.* ¶ 4.

⁵² *Id.* ¶ 8. The Bank takes into account the type, location, sensitivity, and scale of the proposed project in light of the nature and magnitude of its potential impacts. *Id.*

Bank's screening process determines that an EA is necessary, the Bank discusses the scope of the EA with the borrower and designates a category.⁵³ A proposed project is classified as Category A if it is likely to have significant environmental impacts that may extend beyond the project site or facility.⁵⁴ EAs for Category A projects should include the project's potential negative and positive environmental impacts, balanced with feasible alternatives (as well as a *without project* alternative), and a recommendation of any measures needed to prevent, minimize, mitigate, or compensate for adverse environmental impacts.⁵⁵ Category B projects are those that have the potential to adversely impact human populations or environmentally sensitive areas including wetlands, forests, grasslands, and other natural habitats, but are less detrimental than Category A projects.⁵⁶ "These impacts tend to be site-specific, and few, if any, are irreversible."⁵⁷ The scope of an EA for a Category B project is narrower than for a Category A project, but it must still examine the project's potential negative and positive environmental impacts and make recommendations for mitigation of negative impacts.⁵⁸ "A proposed project is classified as Category C if it is likely to have minimal or no adverse environmental impacts."⁵⁹ No EA is

⁵³ *Id.*

⁵⁴ *Id.* ¶ 8(a). Typical Category A projects may include: dams and reservoirs, large-scale industrial plants and irrigation, drainage and flood control, land clearance and leveling, mineral development, port and harbor development, resettlement, manufacture, transportation, use of pesticides or other hazardous or toxic materials, and hazardous waste management and disposal. WORLD BANK GP 4.01, ANNEX B, *available at* <http://www.worldbank.org> (1999). The examples provided in GP 4.01, Annex B are merely illustrative, and it is important to note that it is the extent of impacts, not the type of project, that defines the extent of the EA. *Id.*

⁵⁵ WORLD BANK OP 4.01, *supra* note 48, ¶ 8(a).

⁵⁶ *Id.* ¶ 8(b). Typical Category B projects may include: "small-scale irrigation and drainage, renewable energy (other than hydroelectric dams), tourism, rural water supply and sanitation, watershed projects (management or rehabilitation), protected areas and biodiversity conservation, and energy conservation." WORLD BANK GP 4.01, ANNEX B, *supra* note 54.

⁵⁷ WORLD BANK OP 4.01, *supra* note 48, ¶ 8(b).

⁵⁸ *Id.*

⁵⁹ *Id.* ¶ 8(c). Typical Category C projects may include: "education, family planning, health, nutrition, institutional development, and most human resource projects." WORLD BANK GP 4.01, ANNEX B, *supra* note 54.

required for Category C projects.⁶⁰

Depending on the project, a range of reports may be used to satisfy the Bank's EA requirement, such as an environmental impact assessment (EIA), a regional sectoral EA, an environmental audit, a hazard or risk assessment, and an environmental management plan (EMP).⁶¹ An EIA, or the equivalent, is generally required for all projects classified as Category A.⁶² An EIA should "identify and assess the potential environmental impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures."⁶³ In addition to an EIA, an EMP must be completed for all Category A projects, while Category B projects might require an EMP depending on the scope and nature of potential environmental impacts.⁶⁴ World Bank OP 4.01, Annex B lists the content of an EA report for Category A projects, and OP 4.01, Annex C gives more detailed guidance for EMPs.⁶⁵

Other than the information provided about the general categories of EAs in OP 4.01, the World Bank also includes a checklist for potential EA issues in GP 4.01.⁶⁶

C. Environment-Specific Policies

In addition to establishing the Bank's current EA policy, OP/GP 4.01 also sets forth more specific policies for projects that

⁶⁰ WORLD BANK OP 4.01, *supra* note 48, ¶ 8(c).

⁶¹ *Id.* ¶ 7. Brief definitions of each of these instruments are included in World Bank OP 4.01, Annex A. WORLD BANK OP 4.01, ANNEX A, *available at* <http://www.worldbank.org> (1999).

⁶² WORLD BANK OP 4.01, *supra* note 48, ¶ 8(a).

⁶³ WORLD BANK OP 4.01, ANNEX A, *supra* note 61, ¶ 2.

⁶⁴ *Id.* ¶ 3. An EMP is defined as "an instrument that details (a) the measures to be taken during the implementation and operation of a project to eliminate or offset adverse environmental impacts, or to reduce them to acceptable levels; and (b) the actions needed to implement these measures." *Id.*

⁶⁵ WORLD BANK OP 4.01, ANNEXES B-C, *available at* <http://www.worldbank.org> (1999).

⁶⁶ WORLD BANK GP 4.01, ANNEX B, *supra* note 54. Some potential EA issues include: biological diversity, coastal and marine resources management, global externalities, hazardous and toxic materials, indigenous peoples, industrial pollution, international treaties and agreements on the environment, involuntary resettlement, natural habitats, tropical forests, watersheds, and wetlands. WORLD BANK GP 4.01, ANNEX A, *available at* <http://www.worldbank.org> (1999).

the World Bank has determined affect project development.⁶⁷ *The Pollution Prevention and Abatement Handbook* establishes the pollution prevention and abatement measures and emission levels that are “normally acceptable to the Bank.”⁶⁸ Furthermore, GP 4.01, Annex A references a number of policies that relate to more specific environmental projects.⁶⁹

In order to address environmental concerns, the World Bank established a “micro-loan” program in August 1995.⁷⁰ The program strives to assist the poorest countries by focusing on small direct loans to family enterprises and small-scale businesses.⁷¹

D. Disclosure Policy and Public Consultation

In 1993, the World Bank significantly revised its disclosure policy in order to provide more information to the public.⁷² The revised policy created the InfoShop and Public Information Center in order to expand the range of documents released and to increase the ease of public access.⁷³ The expanded disclosure policy endeavored to facilitate coordination between all affected groups and, ultimately, to reduce poverty and promote sustainable development.⁷⁴ Information available from the Bank includes

⁶⁷ WORLD BANK OP/GP 4.01, available at <http://www.worldbank.org> (1999).

⁶⁸ WORLD BANK OP 4.01, *supra* note 48, ¶ 6.

⁶⁹ WORLD BANK GP 4.01, ANNEX A, *supra* note 66. GP 4.01, Annex A references more specific concerns, such as OP 4.09 (pest management/pesticides), OP/BP/GP 4.04 (natural habitats/biological diversity/tropical forests/wetlands), OP/BP 4.10 (indigenous peoples), OP/BP/GP 7.50 (international waterways), and OP/BP/GP 8.50 (natural hazards). *Id.*

⁷⁰ Hourcle, *supra* note 9, at 751.

⁷¹ *Id.*

⁷² *World Bank—Information Disclosure Policy*, available at <http://www.worldbank.org/html/pic/dp00.htm> (1993). In the past, the World Bank was highly criticized for not disclosing information and operating behind closed doors. One commentator stated that “the Bank’s large bureaucracy, cloaked in secrecy, is just the type of organizational structure—like the Department of Energy’s nuclear weapons program from its inception through the 1980s—that tends to fixate on the goal of accomplishing a project and relegates all other concerns, including people and the environment, to no better than ancillary consideration.” Hourcle, *supra* note 9, at 721-22.

⁷³ *World Bank—Information Disclosure Policy* ¶ 4, available at <http://www.worldbank.org/html/pic/dp02.htm> (1993).

⁷⁴ *Id.*

project information documents, staff appraisal reports, country economic and sector reports, sectoral policy papers, environmental assessments, environmental analyses, environmental action plans, project data reports, bank financial information, economic and research data, and administrative information.⁷⁵ While the Bank has significantly expanded its disclosure policy, the Bank has also established some constraints to ensure its effective operation.⁷⁶

Under the World Bank's EA policy, a borrower must consult and take into account the views of project-affected groups and local NGOs on the project's environmental aspects for all Category A and B projects proposed for IBRD or IDA financing.⁷⁷ In addition, information related to environmental assessment for any project proposed for IBRD or IDA financing must be provided to project-affected groups and local NGOs to ensure meaningful consultation for all Category A and B projects.⁷⁸ For any Category A project, the borrower must initially provide a summary of the proposed project's objectives, description, and potential impacts.⁷⁹ After the draft EA report is prepared, the borrower must disclose a summary of the EA's conclusions and make available the draft EA report in a public place accessible to the affected groups and local NGOs.⁸⁰ Any separate Category B report for a project proposed for IDA financing must be made available to project-affected groups

⁷⁵ See WORLD BANK, INFORMATION DISCLOSURE POLICY 5-12 (1994).

⁷⁶ See *id.* at 13. Some of the documents not subject to disclosure include proceedings of the Board of Executive Directors, documents provided to the Bank under the explicit or implied understanding that they will not be disclosed outside the Bank, documents stating the Bank's country strategy, analysis of a country's credit-worthiness, supervision reports, project completion reports, and any other documents, disclosure of which would be detrimental to the interests of the Bank. *Id.* at 13-14.

⁷⁷ WORLD BANK OP 4.01, *supra* note 48, ¶ 15. A borrower should initiate the consultation as early as possible. *Id.* For Category A projects, a borrower must consult such groups at least twice: (1) shortly after environmental screening and before the EA is finalized and (2) once a draft EA is prepared. *Id.* A borrower must also consult such groups throughout the project implementation as necessary to address relevant EA-related issues. *Id.* Although the Operational Policies are very specific as to when a group must be consulted, the World Bank does not specify how such groups' views will be considered.

⁷⁸ *Id.* ¶ 16. The borrower must provide the material in a timely manner and in a form and language that are understandable and accessible to the group. *Id.*

⁷⁹ *Id.* ¶ 17.

⁸⁰ *Id.*

and local NGOs.⁸¹ Before the Bank will appraise any project, all Category A reports for projects proposed for IBRD or IDA financing and any Category B reports for projects proposed for IDA financing must be publicly available in the borrowing country and to the Bank.⁸²

E. International Treaties and Agreements

The environmental assessment report must include information about any relevant international treaty obligations.⁸³ The World Bank maintains a list of international treaties and applicable laws in individual member countries.⁸⁴ The EA policy states that the World Bank will not finance any project that conflicts with an international environmental agreement or a treaty to which the concerned country is a party.⁸⁵

F. Resettlement Policy

Projects with significant environmental impacts may require involuntary resettlement of indigenous people.⁸⁶ Environmental impacts are often closely related to involuntary resettlement and have been formally addressed by the World Bank since the early 1980s.⁸⁷ The World Bank established a policy on resettlement in the 1980s, which was later codified in 1990 as OD 4.30.⁸⁸ OD 4.30 is presently being converted into OP/BP/GP 4.12, Involuntary Resettlement.⁸⁹ The Bank's policy objectives towards involuntary settlement are similar to those regarding environmental assessment in that the Bank seeks to facilitate meaningful consultation among the concerned groups and creates the right to independent judicial

⁸¹ *Id.* ¶ 18.

⁸² *Id.*

⁸³ *Id.* ¶ 3.

⁸⁴ WORLD BANK GP 4.01—ANNEX A, *supra* note 66, ¶ k.

⁸⁵ WORLD BANK OP 4.01, *supra* note 48, ¶ 3.

⁸⁶ Di Leva, *supra* note 2, at 538.

⁸⁷ *See* SHIHATA, *supra* note 6, at 544-45.

⁸⁸ *Id.*

⁸⁹ POSTING OF DRAFT OP/BP 4.12: INVOLUNTARY RESETTLEMENT, *available at* <http://www.worldbank.org/html/extdr/projects.htm> (July 9, 1999). The draft version of the operational policies and bank procedures was issued in July 1999, and the Good Practices section will be posted in the near future. *Id.*

review where resettlement is inevitable.⁹⁰

Draft OP 4.12, Section I outlines the Bank's objectives, which are to minimize resettlement and enable people displaced by Bank-supported projects to share in project benefits.⁹¹ In addition, when resettlement cannot be avoided, affected groups should have the opportunity to participate in the planning and implementation of resettlement programs.⁹² The borrower should also assist displaced persons to improve their standard of living, or at least to achieve a standard of living comparable to that which they maintained prior to project implementation.⁹³ Section II of Draft OP 4.12 clarifies the situations covered by the policy.⁹⁴ The policy applies to physical and economic displacement resulting from the "taking of land and other assets" or from the "restriction of access to legally-designated parks and protected areas."⁹⁵ The draft policy, however, does not compensate for indirect social or economic impacts (i.e., refugees from natural disasters, civil war or conflict) or where resettlement is voluntary.⁹⁶

Section III of Draft OP 4.12 outlines the steps a borrower must take to address the impacts of any involuntary resettlement.⁹⁷ The borrower must prepare a resettlement plan that ensures displaced persons are informed of their rights and options pertaining to resettlement, presented with technically and economically feasible resettlement alternatives, and provided prompt and full compensation for assets lost due to resettlement.⁹⁸ In addition, where relocation is necessary, the borrower must provide

⁹⁰ Di Leva, *supra* note 2, at 538.

⁹¹ WORLD BANK DRAFT OP 4.12, § I, available at <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf> (1999). The World Bank will not finance any project unless the borrower establishes that it has explored all other viable alternatives to resettlement, and, when it cannot be avoided, to minimize the magnitude and impacts of resettlement. *Id.* § I, ¶ (a), n. 3.

⁹² *Id.* § I, ¶ (b).

⁹³ *Id.* § I, ¶ (c).

⁹⁴ *Id.* § II.

⁹⁵ *Id.* § II, ¶¶ 2(a), (b). The involuntary taking of land or assets may include relocation or loss of shelter, loss of assets or access to assets, or loss of means of livelihood. *Id.* ¶ 2(a)(i)-(iii).

⁹⁶ *See id.* ¶¶ 2-3.

⁹⁷ *Id.* § III.

⁹⁸ *Id.* § III, ¶¶ 5(a)-(c).

assistance (i.e., moving costs), housing during relocation, in some cases agricultural land at least equivalent to the former land, support (i.e., short-term jobs or subsistence support) during a transition period, and development assistance to restore the group's living standard to pre-displacement levels.⁹⁹

Section IV of Draft OP 4.12 describes the steps a borrower must take to determine persons eligible for compensation.¹⁰⁰ Different planning instruments are required, depending on the type of project, to achieve the objective of the Bank's resettlement policy.¹⁰¹ Section VI of Draft OP 4.12 outlines the different resettlement instruments.¹⁰² Finally, Section VII provides information on the types of assistance offered by the World Bank to borrowers in carrying out its resettlement policy.¹⁰³

G. Inspection Panel

In 1993, the World Bank created an independent three-member body, the Inspection Panel, to provide an independent forum for citizens who believe that their interests have been or could be directly harmed by a project financed by the World Bank.¹⁰⁴ The Inspection Panel is the first independent body established by any international financial institution to provide a forum to hear and investigate complaints by private citizens and groups affected by alleged violations of the financial institution's policies and procedures.¹⁰⁵

⁹⁹ *Id.* § III, ¶¶ 5(d)-(g).

¹⁰⁰ *Id.* § IV. The borrower must perform a census and develop a procedure establishing the methodology to determine which displaced persons are eligible for compensation. *Id.* § IV, ¶ 12.

¹⁰¹ *See id.* § V. A Resettlement Plan, or an abbreviated Resettlement Plan, is required for all projects involving involuntary resettlement unless otherwise specified. *Id.* ¶ 15.

¹⁰² *Id.* § VI. More detailed information on resettlement plans and abbreviated resettlement plans and the resettlement policy framework is provided by the Bank in Draft OP 4.12, Annex, available at <http://www.worldbank.org/> (1999).

¹⁰³ *Id.* § VII. Forms of World Bank support include assistance in developing the resettlement plan, financing technical assistance, and financing the cost of resettlement. *Id.*

¹⁰⁴ *See* IBRAHIM F.I. SHIHATA, THE WORLD BANK INSPECTION PANEL 5-35 (1994); *see also* Di Leva, *supra* note 2, at 519.

¹⁰⁵ SHIHATA, *supra* note 104, at 1.

The Inspection Panel is governed by Operating Procedures established in 1994 by the Board of Executive Directors of the World Bank.¹⁰⁶ The procedures adopted were provisional and subject to review twelve months later.¹⁰⁷ The World Bank conducted two assessments of the Inspection Panel in 1996 and 1999 and is currently incorporating the results of the review into revised Operating Procedures.¹⁰⁸

The Inspection Panel (hereinafter "Panel") is available to persons or groups who believe the Bank has failed, or has failed to require others, to comply with its policies and procedures, but only after the group has requested that the World Bank Management address the problem and the Bank has failed to do so.¹⁰⁹ The Panel's function is to carry out independent investigations.¹¹⁰ When it receives a request for inspection (hereinafter "request"), the Panel must make a preliminary review of the request, independently assess the information, and then recommend to the Board of Executive Directors (the Board) whether or not the request should be investigated.¹¹¹ If the Board authorizes an investigation, the Panel collects information and presents its findings, conclusions, and an independent assessment to the Board.¹¹² Based on the Panel's findings and the Bank Management's recommendations, the Board will then consider whether the Bank should take any action.¹¹³

The Panel is authorized to accept requests for inspection which allege that an "actual or threatened material adverse effect" was directly caused by the failure of the Bank to comply with its own

¹⁰⁶ *See id.* at 39-47.

¹⁰⁷ THE INSPECTION PANEL FOR THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT ASSOCIATION, OPERATING PROCEDURES AS ADOPTED BY THE PANEL (1994), reprinted in SHIHATA, *supra* note 104, at 377.

¹⁰⁸ Open Letter from Eduardo G. Abbot, Executive Secretary of the Inspection Panel, available at <http://www.worldbank.org/html/ins-panel/Opletter.html> (Aug. 16, 1999).

¹⁰⁹ THE INSPECTION PANEL, OPERATING PROCEDURES, reprinted in SHIHATA, *supra* note 104, at 377-78.

¹¹⁰ *Id.* at 378.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

policies and procedures.¹¹⁴ The Panel is not authorized to deal with complaints caused by actions other than those of the Bank (e.g., actions of the borrower) and that do not involve any direct action of the Bank; nor may it deal with complaints related to procurement decisions by Bank borrowers, requests filed after the closing date of the financing project or after ninety-five percent of the loan proceeds have been disbursed, or requests related to matters on which the Panel has already made recommendations unless justified by new evidence.¹¹⁵

The Resolution that established the Inspection Panel called for a review two years after the date of appointment of the first panel members.¹¹⁶ The 1996 Review clarified that the Panel lacks the authority to review the Bank's consistency in implementing its policies and practices, and is limited to cases of alleged failure of the Bank to follow its operational policies and procedures.¹¹⁷ The 1996 Review also reaffirmed that the Board has the authority to interpret the Resolution and to authorize inspections.¹¹⁸

The Board ordered a second review of the Inspection Panel to be conducted by the Bank in April 1999.¹¹⁹ The 1999 Review emphasized the importance of the Panel's purposes and its independence, and also clarified several operational policies and procedures.¹²⁰ When responding to a request for inspection, Management of the World Bank must provide evidence that: (i) it has complied with the relevant Bank policies and procedures; (ii) there are serious violations of Bank policy attributed exclusively to the Bank, but the Bank intends to correct its failures; (iii) the serious violations are attributable exclusively to the borrower or to

¹¹⁴ *Id.* at 379.

¹¹⁵ *Id.*

¹¹⁶ INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, INTERNATIONAL DEVELOPMENT ASSOCIATION, REVIEW OF THE RESOLUTION ESTABLISHING THE INSPECTION PANEL—CLARIFICATION OF CERTAIN ASPECTS OF THE RESOLUTION, available at <http://www.worldbank.org/html/ins-panel/IPNclarification.html> (Oct. 17, 1996).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ WORLD BANK, CONCLUSIONS OF THE BOARD'S SECOND REVIEW OF THE INSPECTION PANEL, available at <http://www.worldbank.org/html/extdr/ipwg/secondreview.html> (Apr. 20, 1999).

¹²⁰ *See id.*

other factors beyond the Bank's control; or (iv) the serious failures are attributable to both the Bank and to the borrower or external factors.¹²¹ In addition, the Panel is authorized to determine independently the eligibility of a request for inspection.¹²² If the Panel recommends an investigation, the Board will authorize the inspection without judging the merits of the case, except for certain technical eligibility criteria.¹²³ Whenever the Panel interprets the Resolution, the Board must be consulted.¹²⁴ The Panel has the authority to investigate the Bank's conduct within the country in question, but should keep a "low [] profile."¹²⁵ The 1999 Review also clarifies the content of the Panel's report as related to Bank failures to follow policy.¹²⁶ Finally, the Board reemphasized the importance of prompt disclosure of information in the native language of both the claimants and the public when possible.¹²⁷

H. Global Environment Facility

The Global Environment Facility (GEF) was established in 1991 as a joint international effort to help solve global environmental problems.¹²⁸ The GEF Trust Fund was established

¹²¹ *Id.* Following the Bank's response, the Inspection Panel may agree or disagree and proceed accordingly. *Id.* If the Bank responds that it will correct serious failures that are attributable to the Bank, the Inspection Panel will determine whether the Bank's compliance, or evidence of its intention to comply, is adequate. *Id.*

¹²² *Id.* at 2. In determining whether an inspection should be conducted, the Panel will base its recommendation on the information provided in the request, in the Management response, and other documentary evidence. *Id.*

¹²³ *Id.* The 1999 Review lists eligibility criteria the Board may consider (e.g., the matter is not related to procurement or the loan has not been closed or substantially disbursed). *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 3. The Panel is authorized to investigate the Bank, not the borrower, although it may be necessary to consult with affected people. *Id.* The Panel should decline media requests during the investigation or, when necessary, should limit responses to the process of the investigation. *Id.* Thus, the Bank attempts to limit public exposure and potential influence on Panel decisions.

¹²⁶ *See id.* The report should include all relevant facts that are necessary to fully understand the Panel's findings and conclusions. The Panel, however, should discuss only "material adverse effects alleged in the request" that have resulted from serious Bank failure to comply with its policies and procedures. *Id.*

¹²⁷ *Id.* at 4.

¹²⁸ *See* Di Leva, *supra* note 2, at 502; *see also* SHIHATA, *supra* note 6, at 223.

by a World Bank resolution on March 14, 1991, and the Facility was formally established in October 1991 as a joint program of the World Bank, United Nations Development Programme (UNDP), and United Nations Environment Programme (UNEP).¹²⁹ The World Bank serves as the trustee and main implementing agency of the GEF.¹³⁰ The GEF was initially established as a three-year pilot phase, and was restructured in 1994 as a permanent institution to increase its transparency and democracy.¹³¹

The purpose of the GEF is to provide less industrialized countries "with a . . . financial incentive to tackle global environmental problems."¹³² The GEF provides grants and funding to "assist in the protection of the global environment" and to promote "environmentally sound and sustainable economic development."¹³³ To assist in the achievement of global environmental benefits, the GEF provides grants and interest-free loans to developing countries and non-government entities in four principal areas: the protection of biological diversity; the protection of international waters; the protection of the ozone layer; and the reduction of greenhouse gases.¹³⁴ For programs to be eligible for GEF support, the projects must address global environmental concerns and must possess no other available financing mechanisms.¹³⁵

IV. Analysis of the World Bank's Environmental Policy and Practices

During the 1950s and 1960s, the World Bank's main objective was to promote the stability and growth of a free and open world economy by providing poor countries with the infrastructure needed for industrialization.¹³⁶ Pressure from member countries,

¹²⁹ See Di Leva, *supra* note 2, at 502 n.3; see also SHIHATA, *supra* note 6, at 222-29.

¹³⁰ SHIHATA, *supra* note 6, at 224.

¹³¹ See Di Leva, *supra* note 2, at 502 n.6; see also SHIHATA, *supra* note 6, at 222-29.

¹³² Andrew Jordan, *Paying the Incremental Costs of Global Environmental Protection: The Evolving Role of the GEF*, ENVIRONMENT, 12, 13 (July-Aug. 1994).

¹³³ Di Leva, *supra* note 2, at 502 (quoting *The Global Environment Facility: Instrument Establishing* (1994), reprinted in 33 I.L.M. 1273, 1284 (1994)).

¹³⁴ See SHIHATA, *supra* note 6, at 54; see also Di Leva, *supra* note 2, at 514.

¹³⁵ See SHIHATA, *supra* note 6, at 224.

¹³⁶ See MILLER-ADAMS, *supra* note 25, at 1-2.

changes in the developing world, and a broader concept of economic development, however, have forced the Bank to alter its lending policy to conform to the changing international perspective.¹³⁷

The World Bank has made significant progress in reforming its environmental policy over the past fifty years. The World Bank provides more financing for environmental protection than any other international financial institution and has a larger environmental staff than any other international agency.¹³⁸ In addition, any project that might potentially impact the environment is subject to an environmental assessment or analysis prior to World Bank approval.¹³⁹ The World Bank often provides financial support in order to implement the required environmental assessment.¹⁴⁰ Furthermore, the World Bank has recently financed many projects exclusively aimed at environmental protection.¹⁴¹ Despite this progress, influential member countries like the United States¹⁴² as well as non-governmental organizations have consistently criticized the World Bank's lack of commitment to environmental protection.¹⁴³

The World Bank has repeatedly adopted and revised environmental guidelines over the past fifty years in response to

¹³⁷ See *id.* The World Bank's Articles of Agreement provide that the World Bank should only consider economic factors when making decisions on potential loans. Hourcle, *supra* note 9, at 729. However, in 1994, former World Bank President Lewis Preston stated that "the mistake for which we are paying dearly today was not recognizing the importance of the environment." *Id.* at 722 n.4 (quoting a speech at the fiftieth anniversary of the World Bank). Furthermore, the World Bank has increasingly recognized the importance of incorporating environmental considerations into its lending policy. See WORLD BANK-ENVIRONMENT MATTERS 1 (1999).

¹³⁸ SHIHATA, *supra* note 6, at 185.

¹³⁹ *Id.*; see also *supra* notes 48-66 (analyzing the World Bank's environmental assessment procedure).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* From 1985 to 1995, the World Bank committed \$9 billion for 118 "primarily environmental" projects. *Id.*

¹⁴² See Ecosystem and Indigenous Peoples Protection Act, H.R. 2969, 106th Cong. (1999) (unenacted). The U.S. House of Representatives recently introduced Bill 2969, which would prevent United States funds from being used for environmentally destructive projects or for projects involving involuntary resettlement funded by any institution of the World Bank. *Id.* § 3.

¹⁴³ See SHIHATA, *supra* note 104, at 8-9.

internal and external criticism.¹⁴⁴ The Bank conducted a study (the Wapenhans Report) in 1992, which indicated that over one-third of the Bank's projects were failing and that the deterioration of the Bank's \$140 billion portfolio was "steady" and "pervasive."¹⁴⁵ In 1993, following the Wapenhans Report, the World Bank began a revision of its environmental policy.¹⁴⁶

The World Bank continued to revise its environmental policies and procedures throughout the 1990s, and, in 1999, the Bank adopted a final version of its guidelines in OP/BP/GP 4.01, which provides clearer guidance to its employees and implements a shift from pollution control to prevention.¹⁴⁷ The revised guidelines strengthen the Bank's environmental policies and procedures in several ways. First, the revised guidelines are more logically organized and streamlined.¹⁴⁸ Second, the revised OP 4.01 increases the scope and clarity of the EA by broadly defining "environmentally sound and sustainable" to include "the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples, and cultural property); and transboundary and global environmental aspects."¹⁴⁹ OP 4.01 also provides clearer guidelines for the methods the Bank must use to assign a project category, for the required content of the EA by category, and for appropriate alternatives to the EA.¹⁵⁰ The original OD 4.01 Annex E merely stated that "best professional judgment is essential" in determining the appropriate category for each project.¹⁵¹ In addition, OD 4.01, Annex E provided no additional guidance to borrowers other than that Category A projects required environmental assessments, while

¹⁴⁴ See Patricia Adams, *The World Bank's New Rules (Same as the Old Rules)*, in FIFTY YEARS IS NOT ENOUGH 146 (Kevin Danaher ed., 1994).

¹⁴⁵ *Id.*

¹⁴⁶ See *id.*

¹⁴⁷ Hourcle, *supra* note 9, at 752; see also *supra* notes 44-66 (analyzing the environmental assessment guidelines found in OP/BP/GP 4.01).

¹⁴⁸ For example, policy statements were scattered throughout O.D. 4.01 (1991), whereas the new guidelines divide up mandatory obligations (Operational Policies and Bank Procedures) and policy statements (Good Practices) into separate, distinct sections.

¹⁴⁹ WORLD BANK OP 4.01, *supra* note 48, ¶ 3.

¹⁵⁰ Civic, *supra* note 7, at 255.

¹⁵¹ *Id.* OP 4.01, on the other hand, provides clear definitions of the three categories and expands on the Bank's standards for content and analysis. *Id.* at 255-56.

Category B projects required more limited environmental analyses, and Category C projects required no environmental assessment at all.¹⁵²

Despite these improvements, the revised OP/BP/GP 4.01 is not without faults. First, although the World Bank actively sought input from NGOs on these revisions, it restricted comments to the issue of whether the substance of the former policy withstood revision into the new format.¹⁵³ Furthermore, while the original OD 4.01 provided guidance to borrowers in preparing the EA and observing sustainable practices, these policy statements are absent from the revised edition.¹⁵⁴ This may be a result of the formation of the Inspection Panel, which will hold the World Bank responsible for not following its policy and procedures.¹⁵⁵ The original OD 4.01 was very clear that the EA should be undertaken before the appraisal stage of the project.¹⁵⁶ On the other hand, revised OP 4.01 is somewhat ambiguous on when the EA should be prepared.¹⁵⁷

During the period from 1990 to 1999, 186 projects (twelve

¹⁵² *Id.* at 255. OP 4.01 gives more details of the requirements for each category. For example, OP 4.01 specifically requires the Bank to consider the "without project situation" for Category A projects that have the potential to cause more harm than good. Moreover, affected persons and NGOs must be consulted for Category A projects. *Id.* at 256.

¹⁵³ *See id.* at 247. Therefore, NGOs could not comment on whether the Bank adequately accounted for the environment or indigenous persons, but could only comment as to whether the Bank properly interpreted its former policy.

¹⁵⁴ *See id.*

¹⁵⁵ *See id.* The Bank may have intentionally placed all policy statements in the Good Practices section, a section with which it is not obligated to comply. *Id.*

¹⁵⁶ *Id.* at 248. World Bank OD 4.01 stated explicitly that "EA is carried out during project preparation, before appraisal, and is closely linked to the feasibility study." WORLD BANK OD 4.01, ¶ 1, available at <http://www.worldbank.org> (1991). Furthermore, OD 4.01, paragraph 2 (1991) stated that "all environmental consequences should be recognized early in the project cycle and taken into account in project selection, siting, planning and design." *Id.* ¶ 2.

¹⁵⁷ *See Civic, supra* note 7, at 248. OP 4.01, paragraph 1 states that the Bank requires EAs for proposed financing projects in order to improve decision making. WORLD BANK OP 4.01, *supra* note 48, ¶ 1. Paragraph 2 further elucidates that the Bank favors "preventive measures over mitigatory or compensatory measures, whenever feasible." *Id.* ¶ 2. In addition, OP 4.01, paragraph 3 states that the "EA is initiated as early as possible in project processing." *Id.* ¶ 3. Other than these broad statements, the Bank does not require that the EA be initiated before the appraisal of the project. Thus, an EA is much more likely to occur after the appraisal of the project, and environmental impacts may not be fully evaluated before decisions are made on the project.

percent of the Bank's lending portfolio) were classified as Category A, which requires a full environmental assessment.¹⁵⁸ In addition, 931 projects (about thirty-three percent of the Bank's lending) were classified as Category B, which requires a more limited environmental analysis.¹⁵⁹ The remaining projects (about fifty-five percent of the Bank's lending) had no environmental impact (Category C) and thus required no environmental assessment.¹⁶⁰

In 1997, the World Bank conducted a review of its EA history for the fiscal period from 1992 to 1995.¹⁶¹ As the Bank has gained more experience with EAs, it has made considerable progress in implementing its EA policy.¹⁶² EA is now firmly established as part of the Bank's normal lending policy, which has reduced the potential for adverse environmental impacts as a result of Bank projects.¹⁶³ The quality of EAs for Bank-financed projects has also improved since the Bank implemented its EA policy in 1989.¹⁶⁴ According to the Bank review, the most notable improvements are in the areas of impact identification and assessment, and EA mitigation, monitoring, and management planning.¹⁶⁵ Not only are these improvements a result of more Bank experience, but they also are a product of improvements in many borrowing countries, in EA capabilities, and in the quality of EA consultants.¹⁶⁶ The Bank's environmental screening is also more consistent in terms of how projects are classified for purposes of EAs, a trend which

¹⁵⁸ Magda Lovei & Anjali Achanga, *The Bank's Evolving Environmental Agenda—Achievements and Future Challenges*, ENV'T MATTERS, Annual Review 8 (July 1999).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ World Bank Technical Paper No. 363—*The Impact of Environmental Assessment: A Review of the World Bank Experience* (1997) [hereinafter *The Impact of Environmental Assessment*]. The Bank is currently conducting its third review of the environmental assessment process. See *id.*

¹⁶² See *id.* at xvi.

¹⁶³ *Id.*

¹⁶⁴ See *id.*

¹⁶⁵ *Id.* To further improve the use of economic analysis and identification and assessment of impacts, the World Bank issued *Environmental Assessment Sourcebook Update No. 23—Economic Analysis and Environmental Assessment* in April 1998. *Environmental Assessment Sourcebook Update*, *supra* note 36.

¹⁶⁶ *The Impact of Environmental Assessment*, *supra* note 161, at xvi.

has been further strengthened by the revised OP/BP/GP 4.01.¹⁶⁷

Although the new OP 4.01 stresses the importance of consulting NGOs, the weakest aspect of the EA continues to be public consultation and analysis of alternatives.¹⁶⁸ This shortcoming is a result of a range of factors, including lack of critical skills or prior experience, and the fact that major project selection and design decisions are sometimes made before the Bank becomes involved.¹⁶⁹ While EAs have a significant impact on project preparation, data suggest that Category A projects have a better record in terms of their implementation than do other Bank projects.¹⁷⁰ Category B projects are within virtually every environmental sector, and, for this reason, the required environmental analyses vary widely.¹⁷¹ The Bank has taken steps to improve the quality of Category B environmental analyses by issuing OP 4.01 Annex C, which details the requirements for environmental management plans.¹⁷²

NGOs have criticized the Bank in the past for failure to disclose information relating to Bank operations and policies.¹⁷³ In response, the Bank has taken several steps to increase "transparency" over the past several years. First, the Bank has

¹⁶⁷ See *id.* at xvii.

¹⁶⁸ *Id.* at xvi.

¹⁶⁹ *Id.* at xvi-xvii. In order to address this deficiency, the Bank recently issued *Environmental Assessment Sourcebook Update No. 26—Public Consultation in the Environmental Assessment Process: A Strategic Approach*, available at <http://wbln0018.worldbank.org/essd/essd.nsf/EnvironmentalAssessment/Overview> (May 1999) [hereinafter *Update No. 26*]. *Update No. 26* identified several priority areas for improvement: providing adequate documentation of the consultation process, ensuring that minority/disadvantaged groups are involved, ensuring involvement of communities during the early planning stages of the EA, using systematic approaches to identify and include all interested groups, providing effective and timely disclosure of information, ensuring that concerns of affected persons are reflected in the design of the project, and requiring separate consultations for resettlement issues and environmental concerns. See *The Impact of Environmental Assessment*, *supra* note 161, at xvi-xvii. To improve these areas, the Bank outlined the proper design and implementation of a public consultation plan. See *id.*

¹⁷⁰ *Id.* at xvii-xviii. This trend most likely derives from the Bank's requirement of full EAs for Category A projects, whereas the environmental impacts of Category B projects vary widely and a full EA is not always required.

¹⁷¹ *Id.* at xviii.

¹⁷² See WORLD BANK OP 4.01, ANNEX C, *supra* note 65.

¹⁷³ Hourcle, *supra* note 9, at 741-42.

increased consultation with NGOs and affected people of World Bank projects.¹⁷⁴ In addition, the Bank created the Public Information Center in 1993 “to increase the availability of previously restricted documents.”¹⁷⁵ Furthermore, as of July 1998, the Bank will release the Country Assistance Strategy (CAS) for a particular country at the request of its government.¹⁷⁶ The CAS is the central document to the World Bank’s objectives in a certain country; it describes the Bank’s strategy based on an assessment of priorities in the country and indicates the level and composition of assistance to be provided.¹⁷⁷ The World Bank has become a more open institution, which, according to Bruce Rich, a longtime critic of the Bank, is the most important change the Bank could make.¹⁷⁸

The World Bank’s overall approach to environmental issues also addresses its relation to international agreements. In addition to following Bank environmental policies, the World Bank will not finance any project that conflicts with an international environmental agreement or treaty to which the concerned country is a party.¹⁷⁹ The Bank has also supported several international treaties with specific projects throughout the world. For example, the Bank financed the Thailand Forestry Project in support of the Biodiversity Treaty.¹⁸⁰ The Bank has also initiated the Carbon Investment Fund to invest in projects that result in carbon offsets consistent with the Kyoto Protocol.¹⁸¹ Furthermore, the Bank acts as one of the four implementing agencies of the Multilateral Fund for the Implementation of the Montreal Protocol, which helps developing countries reduce their consumption of ozone-depleting substances.¹⁸²

¹⁷⁴ *Id.*

¹⁷⁵ Bowles & Kormos, *supra* note 8, at 806.

¹⁷⁶ WORLD BANK ANNUAL REPORT—1999, *supra* note 24.

¹⁷⁷ *See id.*

¹⁷⁸ RICH, *supra* note 10, at 306.

¹⁷⁹ WORLD BANK OP 4.01, *supra* note 48, ¶ 3.

¹⁸⁰ Di Leva, *supra* note 2, at 508. The project was designed to help develop sustainable forestry and to support the goals of the Biodiversity Treaty. *Id.* Thailand ratified the Biodiversity Treaty in exchange for Bank financing to aid Thailand in promoting biodiversity. *Id.*

¹⁸¹ *Id.* Thus, the Bank would provide funds to governments and private enterprises (IFC) in order to comply with emission limitation obligations. *Id.* at 509.

¹⁸² *Id.* at 510. In exchange for Bank funds, countries contractually agree not to

"The involuntary resettlement of large numbers of people because of major water resource development projects" has been described as one of the most serious adverse effects of Bank-financed projects.¹⁸³ Traditional cost-benefit analysis, which justifies a project when the economic sum of the project's benefits outweighs the economic sum of the costs, fails to address consequences of displacement at the individual level.¹⁸⁴ Furthermore, reliance on cost-benefit analysis alone is incorrect from the standpoint that resettlement is involuntary because it is not based on a willing buyer and a willing seller.¹⁸⁵ The World Bank attempted to address the problems traditionally associated with involuntary resettlement by adopting an interdisciplinary approach that considers not only economic factors, but social factors as well.¹⁸⁶

According to OP 4.12, Section I, Bank projects should avoid or minimize involuntary resettlement and should explore all viable alternative project designs.¹⁸⁷ The Bank seeks to implement this objective by considering both economic and social impacts of Bank projects and by consulting with affected groups and NGOs.¹⁸⁸ In the past, NGOs have criticized the Bank for employing utilitarian methods in evaluating involuntary resettlement.¹⁸⁹ For example, in a press briefing on resettlement, the World Bank's Vice President for Sustainable Development answered a question about the Golande Project by stating that "you have 103 million

restart operations with ozone depleting substances. *Id.*

¹⁸³ THE ECONOMICS OF INVOLUNTARY RESETTLEMENT—QUESTIONS AND CHALLENGES 51 (Michael M. Cernea ed., 1999).

¹⁸⁴ *Id.* at 19-20. In other words, traditional cost-benefit analysis fails to consider social factors.

¹⁸⁵ *Id.* at 21.

¹⁸⁶ *Id.* at 2. The World Bank now requires a socioeconomic survey that describes standard household characteristics, the magnitude of displacement, information on the full resource base of the affected population, the extent to which affected groups will suffer a full or partial loss of assets, public infrastructure and social services that will be affected, formal and informal institutions (i.e., community organizations) that can assist with designing and implementing the resettlement programs, and attitudes on resettlement options. WORLD BANK DRAFT OP 4.12, ¶ 6, *available at* <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf> (1999).

¹⁸⁷ WORLD BANK DRAFT OP 4.12, *supra* note 91, § I.

¹⁸⁸ *Id.* §§ II, III.

¹⁸⁹ Hourcle, *supra* note 9, at 739-40.

people who are going to benefit—181,000 are going to be forced to be resettled.”¹⁹⁰ As far as the World Bank was concerned, because less than one percent of the population would be adversely affected by the project, it was worth implementing.

Many inadequacies of resettlement operations, however, are a result of failure to implement existing policies established by the Bank rather than a need to develop new policies.¹⁹¹ Often, government agencies that agree with Bank resettlement guidelines at the outset of a Bank-financed project later ignore Bank policy during the implementation phase.¹⁹² The revised involuntary resettlement policy (Draft BP 4.12 (1999)) directly addresses this problem. The 1990 policy (OD 4.30) only made a very broad statement that “resettlement components should be supervised throughout implementation.”¹⁹³ The revised policy (Draft OP 4.12) not only recognizes the “importance of close and frequent supervision to good resettlement outcomes,” but also details how the supervision will be implemented.¹⁹⁴ The Regional Vice-President, along with the relevant County Director, are responsible for making sure that appropriate measures are followed to ensure effective supervision of Bank projects.¹⁹⁵

In principle, the World Bank asserts that where resettlement is unavoidable, displaced persons should have opportunities to participate in planning and implementing resettlement programs and should be restored to pre-displacement levels “or to levels prevailing prior to the beginning of project implementation, whichever is higher.”¹⁹⁶ Many Bank projects, however,

¹⁹⁰ *Id.* at 740 (quoting a World Bank Press Briefing).

¹⁹¹ THE ECONOMICS OF INVOLUNTARY RESETTLEMENT—QUESTIONS AND CHALLENGES, *supra* note 183, at 53.

¹⁹² *Id.*

¹⁹³ WORLD BANK OD 4.30, ¶ 31, available at <http://wbIn0018.worldbank.org/institutional/manuals/opmanual.nsf> (1990).

¹⁹⁴ WORLD BANK DRAFT BP 4.12, ¶ 13, available at <http://wbIn0018.worldbank.org/institutional/manuals/opmanual.nsf> (1999).

¹⁹⁵ *Id.* In order to carry out this supervision, the County Director allocates funds to adequately supervise resettlement, taking into account the complexity of the resettlement and the need for outside experts. *Id.* Furthermore, supervision should be carried out in accordance with the Regional Action Plan for Resettlement Supervision. *Id.*

¹⁹⁶ WORLD BANK DRAFT OP 4.12, *supra* note 91.

consistently underestimate the cost of resettlement.¹⁹⁷ The Bank attempted to correct this problem in Draft OP/BP 4.12 of its revised policies and procedures by establishing more specific and detailed guidelines relating to the evaluation of the costs of involuntary resettlement.¹⁹⁸ These policies include impacts covered, specific measures that ensure displaced persons are informed, consulted and fully compensated, criteria for eligibility, requirements of different planning instruments, and Bank assistance to the borrowing country to achieve the objectives of the resettlement policy.¹⁹⁹ The Bank, moreover, is in the process of issuing *The Resettlement Sourcebook*, which outlines issues in policy interpretation and implementation as well as technical information.²⁰⁰ The success or failure of resettlement plans, however, will ultimately be determined by two factors: (i) whether the borrowing country follows the Bank's policies and procedures; and (ii) whether the Bank enforces its policies where borrowing countries fail to meet their obligations.

Private citizens may be negatively impacted by World Bank projects in many ways, including involuntary resettlement and adverse environmental consequences. The World Bank created the Inspection Panel in 1993 to provide an independent forum to deal with private citizens that believe they have been adversely affected by the Bank's failure to follow its policies and procedures.²⁰¹ The Bank's decision to create the Inspection Panel was influenced by two interwoven concerns.²⁰² First, the Bank, along with some member countries and many NGOs, believed it needed to improve the management of its loan portfolio.²⁰³ The Wapenhans Study, conducted by the Bank in 1992, indicated that Bank staff were often motivated to approve as many loans as possible.²⁰⁴ This

¹⁹⁷ THE ECONOMICS OF INVOLUNTARY RESETTLEMENT—QUESTIONS AND CHALLENGES, *supra* note 183, at 53. The lack of funds often then leads to unsatisfactory implementation of the resettlement plans.

¹⁹⁸ WORLD BANK DRAFT OP 4.12, *supra* note 91, § II.

¹⁹⁹ *See id.* § III.

²⁰⁰ WORLD BANK DRAFT BP 4.12, *supra* note 194, ¶ 7.

²⁰¹ Hourcle, *supra* note 9, at 745.

²⁰² SHIHATA, *supra* note 104, at 5.

²⁰³ *Id.*

²⁰⁴ *Id.* at 6-7.

“approval culture” resulted in less Bank supervision of implementation of Bank policies and procedures by borrowing countries.²⁰⁵ In an effort to correct this problem, the Bank revised its policies and procedures to involve affected persons in the design and implementation of a project, to foster Bank “ownership” (e.g., commitment of the borrower to the project’s objectives), to increase involvement of local NGOs, and to improve monitoring of the Bank and its operations.²⁰⁶ The second major driving force in the establishment of the Inspection Panel was concern about the accountability and transparency of World Bank operations.²⁰⁷ NGOs and certain member countries claimed that the World Bank was not accountable for its activities and that the Bank needed to be more open and responsive.²⁰⁸ The creation of the Panel addressed these concerns by providing an independent forum to review allegations that the Bank failed to adhere to its policies.

Since its establishment in 1993, the Inspection Panel has received twenty requests for inspection.²⁰⁹ A group of Nepalese citizens and residents filed the first request for inspection on October 24, 1994.²¹⁰ The complaint alleged that the proposed Arun III Hydroelectric Project lacked adequate economic evaluation and

²⁰⁵ *Id.* at 7.

²⁰⁶ *Id.* at 7-8.

²⁰⁷ *Id.* at 8.

²⁰⁸ *Id.* at 9. For example, hydroelectric dams financed by the World Bank have caused adverse environmental impacts and significant resettlement problems in the past. In the 1950s, the World Bank convinced Thailand to create an independent power agency, the Electric Generating Authority of Thailand (EGAT). RICH, *supra* note 10, at 10. Between the 1950s and 1991, the World Bank approved sixteen loans to EGAT, amounting to nearly \$700 million for large-scale dams and power plants, which caused the resettlement of thousands of Thais onto infertile land and increased their poverty. *Id.* Rich states, “[i]n the course of these forced displacement of the poor, EGAT had created a legacy of secrecy and contempt for local opinion, and mistrust among the people affected by its projects.” *Id.* Significantly, not only was EGAT created by the Bank, but the Bank also provided financing; thus, the Bank “exercised an important influence in its attention—or lack of attention—to environment and social matters over the years.” *Id.*

²⁰⁹ WORLD BANK—REQUESTS FOR INSPECTION, *available at* <http://www.worldbank.org/html/ins-panel/requests.html> (January 2000); WORLD BANK OVERVIEW—THE INSPECTION PANEL FOR THE WORLD BANK—REQUESTS FOR INSPECTION SUMMARIES, *available at* http://www.worldbank.org/html/ins-panel/overview_page3.html (Fall 1998) [hereinafter WORLD BANK INSPECTION SUMMARIES].

²¹⁰ Hourcle, *supra* note 9, at 746.

could cause harm to the environment and indigenous people as well as unnecessary involuntary resettlement.²¹¹ The IDA's Management responded to the request by denying any acts or omissions that violated its policies.²¹² The Inspection Panel disagreed and recommended an investigation.²¹³ The Board approved the Panel's recommendation, but restricted the inspection to alleged violations of policies relating to environmental assessment, involuntary resettlement, and indigenous people.²¹⁴ Although the Board did not authorize an inspection into the analysis of economic alternatives, the Panel determined that options, such as smaller-scale hydroelectric projects, were not adequately analyzed.²¹⁵ Following the Panel's recommendation, the Bank withdrew its support of the Arun III project in June 1995.²¹⁶ The Arun III investigation was significant because it represented the Panel's first inspection and established precedents on eligibility and requirements for inspection.²¹⁷

The Bank received nineteen additional requests for investigation between 1995 and 1999.²¹⁸ The Inspection Panel determined that three of these requests were not eligible for inspection, seven inspections were recommended, five inspections were not recommended, and four decisions are still pending.²¹⁹

²¹¹ WORLD BANK INSPECTION SUMMARIES, *supra* note 209. The project consisted of building a large hydroelectric dam and a 201 megawatt power station in the Arun Valley, which required construction of a long access road through the valley. *Id.*

²¹² *Id.*

²¹³ *Id.* The Panel's findings focused on the access road that would be built in a region with no roads and significant environmental and cultural resources. *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.* The Arun III project would have been the largest project ever undertaken by Nepal. The cost of the project was estimated at more than \$1 billion, which is nearly equivalent to Nepal's annual budget. Furthermore, limited electrification in Nepal would have required uncertain power sales to India to guarantee an adequate economic rate of return. *Id.*

²¹⁶ *Id.*

²¹⁷ Arun III reinforced the Panel's policy and established precedents, including the process involved in inspection (i.e., the affected group must request the Bank to address the violation). Significantly, it actually held the Bank accountable for not following its own procedures and policies. *Id.*

²¹⁸ WORLD BANK—REQUESTS FOR INSPECTION, *supra* note 209.

²¹⁹ *Id.* Of the seven projects for which the Panel recommended inspection, it held that the Bank had violated its policies and the persons requesting the inspection were

The first of three requests determined not to be eligible occurred in April 1995. A Greek family alleged that the IDA violated OMS 1.28 by extending credit to Ethiopia despite the requestor's claim that the previous government expropriated the requestor's assets and blocked his bank accounts.²²⁰ The Panel denied the request because the requestor did not exhaust local remedies and had not established how IDA was responsible for the loss of the requestor's assets.²²¹ In November 1995, the Panel received a second request alleging that the IFC violated IFC and World Bank policies in the construction of the Pangué/Ralco hydroelectric dams in Chile.²²² The Panel, however, restricts its mandate to the review of alleged violations of operational policies and procedures related to the design, approval, or implementation of projects financed by the IBRD or IDA only.²²³ Thus, the Panel denied the request because it was financed through the IFC. In January 1999, the Panel denied a third request for investigation because the requestors did not take steps to resolve the dispute with the Bank Management first.²²⁴ In sum, these requests show that the Inspection Panel is a forum of last resort and is restricted to reviewing only IBRD and IDA financed projects.

After the Panel determines that a project is eligible for review, the Panel must decide whether to recommend an investigation to the Bank Board.²²⁵ Since the Arun III project in 1994, the Panel has recommended that seven of the remaining twelve requests should be investigated.²²⁶ The Board approved each of these

directly harmed. On the other hand, the Bank did not recommend an investigation for five projects either because the Bank did not violate its policies or the groups were not directly harmed. The four pending decisions relate to mining activities in Ecuador, the Lake Victoria Environmental Project in Kenya, involuntary resettlement in China, and hydroelectric projects in Lesotho and South Africa, which allegedly deprive persons of their mining rights without adequate compensation. *Id.*

²²⁰ WORLD BANK INSPECTION SUMMARIES, *supra* note 209.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ WORLD BANK—REQUESTS FOR INSPECTION, *supra* note 209.

²²⁵ SHIHATA, *supra* note 104, at 378.

²²⁶ WORLD BANK—REQUESTS FOR INSPECTION, *supra* note 209. One project that clarified that the Panel's scope of inspection includes GEF-financed projects. The Panel and Board conclusively addressed this situation in a request for inspection in March 1998. The project was GEF-financed and addressed biodiversity protection in India.

recommendations, except one involving a natural resources management and conservation project in Brazil.²²⁷ On June 14, 1995, local NGOs representing intended beneficiaries of the project filed a request for investigation.²²⁸ The requestors claimed that the project was not implemented and that harm rather than benefits to the environment and to indigenous people resulted.²²⁹ The Bank's Management responded to the request by acknowledging and explaining the reasons for the three and one-half year delay.²³⁰ The Panel recommended an investigation, but the Board rejected the initial recommendation, claiming it could not reach a decision without more facts.²³¹ The Panel conducted an additional review in December 1995, and again recommended an investigation.²³² Management submitted a restructured plan to implement the project in December 1995, and the Board again decided that an investigation was not necessary.²³³ The Board, however, requested that the Panel conduct a review in January 1997 to ensure that the project was adequately implemented.²³⁴ Although problems persisted through March 1997, the indigenous people preferred that the project be continued rather than have Bank support withdrawn.²³⁵ Deforestation in the Rondonia region of Brazil continues to be a problem, and the Bank and borrower are still working on developing a sustainable health program for indigenous people.²³⁶

Although the Panel did not recommend investigations into five requests, positive actions were taken by the Bank to remedy the situation in at least one of the requests. On August 23, 1996, a

WORLD BANK INSPECTION SUMMARIES, *supra* note 209. The Panel recommended an inspection, and the Board approved the Panel's decision. WORLD BANK—REQUESTS FOR INSPECTION, *supra* note 209.

²²⁷ WORLD BANK—REQUESTS FOR INSPECTION, *supra* note 209.

²²⁸ WORLD BANK INSPECTION SUMMARIES, *supra* note 209.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

local NGO submitted a request for inspection on behalf of the Char people in Bangladesh.²³⁷ The project in question involved the construction and maintenance of a bridge over the Jamuna River to connect the eastern and western portions of Bangladesh to stimulate economic growth.²³⁸ The Chars, living on mid-channel islands, claimed that they were not consulted or accounted for in resettlement and rehabilitation plans.²³⁹ The Panel found that the Char people were excluded from the initial resettlement plan, but that subsequent development of a new compensation plan, which included the Char people, made investigation unnecessary.²⁴⁰ Therefore, even though the Panel did not recommend an investigation, the request highlighted an inadequacy in the existing resettlement plan and led to the adoption of a remedial action plan that compensated the Char people.

The establishment of the Inspection Panel is one of the most important steps the World Bank has taken to reform its environmental policy. In the past fifteen years, the World Bank has significantly reformed its lending policy related to environmental standards.²⁴¹ Although the policy takes into account the environment and indigenous people, its implementation and reinforcement have led to environmental degradation in some cases.²⁴² The Inspection Panel ensures that the Bank will follow its policy, while at the same time highlighting deficiencies where the policy needs to be reformed.

The World Bank has played a significant role in the establishment, restructuring and implementation of the GEF, which has become the major international financial mechanism addressing global environmental problems.²⁴³ During its pilot phase, the GEF was criticized for not allowing public access to its

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ The World Bank has continually reformed its environmental policies since it established OMS 2.36 in 1984. See MILLER-ADAMS, *supra* note 25, at 2; *Environmental Assessment Sourcebook Update*, *supra* note 36, at 1-3.

²⁴² See Civic, *supra* note 7, at 241-60; Bowles & Kormos, *supra* note 8, at 782-808.

²⁴³ SHIHATA, *supra* note 6, at 184.

project information.²⁴⁴ In fact, the U.S. Congress conditioned its first appropriations to the GEF on specific, codified reforms.²⁴⁵ The GEF failed to implement these reforms by the September 30, 1993 deadline, and the United States diverted the GEF funds to another international aid program.²⁴⁶ NGOs have also expressed concern that the World Bank, which has a very questionable history towards environmental protection, is the main implementing agency of the GEF.²⁴⁷

The World Bank has sought to alleviate these concerns through changes in its overall policy and in the restructured policy of the GEF. In 1993, the GEF proposed a formal relationship with NGOs.²⁴⁸ GEF member countries determined that NGOs should not participate directly in the GEF meetings, but should be consulted immediately prior to the meetings.²⁴⁹ When the GEF was restructured in 1994, its new instrument stated that the GEF and the implementing agency should cooperate with international organizations, including NGOs, to further the objectives of the GEF.²⁵⁰ This included allowing the Secretariat of the GEF to invite five NGOs to attend the Council meetings and five other NGOs to observe the meetings (in a separate room).²⁵¹ In addition, the Secretariat of the GEF is required to hold two NGO consultations annually.²⁵² Furthermore, disclosure policies have been broadened since the restructuring of the GEF. When the pilot GEF was

²⁴⁴ Bowles & Kormos, *supra* note 8, at 801.

²⁴⁵ *Id.*

²⁴⁶ *Id.* Following the March 1994 restructuring of the GEF, the Secretary of the Treasury certified that the GEF was in the process of developing "clear procedures for public participation" and increased disclosure. *Id.* at 804. Thus, in 1994, U.S. funds were released to the GEF for the first time. *See id.* at 831.

²⁴⁷ Hourcle, *supra* note 9, at 723-25. NGOs argued that the GEF should function as "an independent entity with its own governance, management and funding programs and priorities." Bowles & Kormos, *supra* note 8, at 831.

²⁴⁸ SHIHATA, *supra* note 6, at 263-64.

²⁴⁹ *Id.* at 264. At these meetings, GEF member countries discuss GEF policy as well as a variety of other issues, including the environment, sustainable development, and poverty. *See id.* at 260-65.

²⁵⁰ *Id.* The objectives of the GEF are to provide less industrialized countries "with a . . . financial incentive to tackle global environmental problems." Jordan, *supra* note 132, at 13.

²⁵¹ SHIHATA, *supra* note 6, at 265.

²⁵² *Id.*

created in 1991, all documents prepared specifically for the Participants' Meetings were made available to NGOs.²⁵³ In 1994, the GEF expanded its disclosure policy to provide for the disclosure of virtually all documents prepared in connection with GEF projects, except for sensitive or confidential sections of the Memorandum of the Director of the Bank's Country Department.²⁵⁴ Despite these improvements, many NGOs remain skeptical of whether the World Bank has learned from its past mistakes.²⁵⁵

The Bank has taken additional steps to further the GEF's objectives of protecting the global environment by promoting environmentally sound and sustainable economic development. In April 1999, the Bank transferred the coordination of GEF activities from the central Environmental Department of the Bank to the regional offices in an effort to incorporate GEF activities more fully into its operations.²⁵⁶ The Bank also created the World Bank Institute to educate Bank staff and participants from member countries on issues related to the global environment.²⁵⁷ Furthermore, the GEF introduced a medium-size lending program in 1999, which grants up to one million dollars to developing countries "to expand partnerships with NGOs under an expedited review and approval process."²⁵⁸

Although the GEF's portfolio has not increased in the past ten years, the GEF has started to emphasize smaller projects. During the pilot phase of the GEF (March 1991 to March 1994), the GEF Council approved a total of 115 projects worth \$730 million.²⁵⁹ In fiscal year 1999, the GEF Council approved twenty-nine projects for \$235 million.²⁶⁰ In addition, a total of twenty-one GEF medium-sized grants were approved in 1999 for a total of \$16

²⁵³ See *id.* at 267.

²⁵⁴ See *id.*

²⁵⁵ See Hourcle, *supra* note 9, at 748-49.

²⁵⁶ WORLD BANK—ENVIRONMENT MATTERS, *supra* note 137, at 11.

²⁵⁷ *Id.* at 65.

²⁵⁸ *Id.* at 7. The smaller-size grants and projects create opportunities for increased access to GEF resources and contribute to the international effort to protect the global environment.

²⁵⁹ SHIHATA, *supra* note 6, at 222-29.

²⁶⁰ WORLD BANK ANNUAL REPORT, *supra* note 24, at 115.

million, up from \$2 million in the fiscal year of 1998.²⁶¹ The GEF's shift in emphasis from large-scale projects to medium-sized projects increases the likelihood of successful implementation and success of pro-environmental projects.

V. Conclusion

The World Bank was established during a period of upheaval following World War II. At that time, the primary focus in creating the Bank was "preserving freedom and ending unemployment."²⁶² The Bank originally concentrated on reconstruction efforts in postwar Europe,²⁶³ but as the need for reconstruction in Europe ebbed, the Bank shifted its focus towards major industrial development and economic expansion programs throughout the Third World.²⁶⁴ However, as the international community began to recognize a broader concept of economic growth, stressing sustainable development, the World Bank has found it difficult to adapt and move beyond its founding principle of encouraging development.

Although the World Bank has a poor record in promoting environmental protection, substantial progress has been made over the past ten years. The Bank has made an increased effort to integrate the environment into its policies and operations.²⁶⁵ In addition, to mitigate potential adverse effects of Bank projects on the environment and indigenous people, environmental assessment procedures have been systematically applied to Bank projects.²⁶⁶ Throughout the 1990s, the Bank has "developed a portfolio of projects with clear environmental objectives and benefits."²⁶⁷ These projects focus on "sustainable natural resource management," "pollution management and urban environmental

²⁶¹ *Id.*

²⁶² Hourcle, *supra* note 9, at 728.

²⁶³ GWIN, *supra* note 33, at 3.

²⁶⁴ *Id.* at 9-11.

²⁶⁵ See SHIHATA, *supra* note 6, at 541-42.

²⁶⁶ See *The Impact of Environmental Assessment*, *supra* note 161, at xvi.

²⁶⁷ WORLD BANK—ENVIRONMENT MATTERS, *supra* note 137, at 9. The "environment portfolio" includes projects in . . . (a) sustainable natural resource management . . . (b) pollution management and urban environmental improvements . . . (c) environmental capacity building . . . and (d) global environmental issues . . ." *Id.*

improvements,” “environmental capacity building, to strengthen environmental institutions,” and “global environmental issues” through the GEF.²⁶⁸ The Bank has also begun to focus on smaller projects through a micro-loan program and GEF medium-sized grants.²⁶⁹

The Bank historically spoke of its commitment to environmental protection and sustainable development; therefore, strong environmental rhetoric will not convince critics that the Bank will actually consider the environmental consequences of economic development in the present and future. For this reason, the Inspection Panel may be the most significant step towards sustainable World Bank projects. The Inspection Panel will hold the World Bank accountable to its more stringent environmental policies and procedures.

One of the most important steps that the Bank can take toward environmental reform is to implement the policies and procedures already in place. In addition to implementation of its policy during the lending process, the Bank must ensure that member countries continue to follow these policies throughout the project. Although the Bank has taken significant steps by reforming its policy, increasing participation of local people and NGOs, disclosing more information, creating an independent enforcement forum, and stressing smaller projects, critics remain skeptical of the World Bank due to its poor environmental record. Due to the Bank’s past environmental rhetoric and lack of policy implementation, this skepticism is warranted. It will take consistent, positive action on behalf of the World Bank to convince many critics that the Bank has truly learned from its past mistakes.

TODD ROESSLER

²⁶⁸ *Id.*

²⁶⁹ *Id.* at 7.

